IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	
PAUL SEALINE **Facility #61087** **Hamilton County, Iowa**	ADMINISTRATIVE CONSENT ORDER NO. 2012-AFO-12

TO: Paul Sealine
1535 360th Street
Stratford, Iowa 50249

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Paul Sealine for the purpose of resolving environmental violations relating to a manure discharge that resulted in a fish kill in Squaw Creek in Hamilton, County, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Trent Lambert, Field Office 2
Iowa Department of Natural Resources
2300 15th S.W.
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to legal requirements:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess

administrative penalties. Iowa Code section 481A.151 authorizes the assessment and recovery of damages to natural resources.

III. STATEMENT OF FACTS

1. In August 2011, Paul Sealine spray-irrigated manure from his facility located at 1553 360th Street, Stratford, Iowa (SE ¼, SW ¼, Section 10, Marion Township, Hamilton County) to a field located adjacent to the facility. The manure from the land application was discharged through a field drainage tile to Squaw Creek resulting in a fish kill. Mr. Sealine's facility consists of three confinement buildings with 2,880 head swine finishers.

2. On August 19, 2011, while in the field Trent Lambert, DNR Field Office 2, received a telephone call from another DNR Field Office 2 personnel stating that there had been a report of a fish kill on Squaw Creek, south of Stanhope in Hamilton County. The call to the field office came from Scott Grummer, DNR Fisheries Bureau. Mr. Grummer had received a report of dead fish from a local resident who had been checking minnow traps in Squaw Creek near the bridge on Highway 17. Mr. Lambert responded immediately and went to the Highway 17 bridge. He visually observed the creek on the west side of the bridge. The water appeared normal, but slightly murky in deeper areas. Mr. Lambert observed live minnows with no signs of stress. On the east side of the bridge, Mr. Lambert observed more live minnows. Mr. Lambert conducted a field test on the creek water from the west side of the bridge. The field tests indicated an ammonia concentration of 0.4 ppm and a dissolved oxygen level of 10.4 mg/L.

3. Mr. Lambert proceeded to the next bridge upstream, one mile west, at Inkpaduta Avenue. On both sides of the bridge, Mr. Lambert observed a large number of dead fish. Mr. Lambert observed murky water with some foam and scum floating on the water surface. The field test indicated an ammonia concentration of >3.0 ppm.

4. Mr. Lambert continued to the next bridge upstream, one mile west, at Hammond Avenue. Mr. Lambert observed a low flow with a significant amount of scum and foam floating on the water. Mr. Lambert did not observe any fish at this location. The field test indicated an ammonia concentration of >3.0 ppm. Mr. Lambert also collected laboratory samples from this location. The laboratory results indicated an ammonia concentration of 0.28 mg/L. Mr. Lambert noted a small animal feeding operation northwest of the bridge about 50 feet from the bank of the creek. There was no evidence of a discharge from this facility.

5. Mr. Lambert proceeded to the next bridge upstream, one mile west, at Gerber Avenue. He noted that the water on both sides of the bridge appeared to be normal with no foam or scum in the water. Mr. Lambert observed live fish at this location. The field test indicated an ammonia concentration of 0.4 ppm. The

laboratory results indicated an ammonia concentration of 0.14 mg/L and a chemical oxygen demand (COD) concentration of 17 mg/L. Mr. Lambert determined that the point of discharge must be located between the Hammond Avenue bridge and the Gerber Avenue bridge. Mr. Lambert reviewed a topographical map of the area and discovered an unnamed tributary of Squaw Creek in the area in question that entered from the south. Mr. Lambert travelled to the tributary where it crosses 390th Street. The tributary had no flowing water and had no evidence of any recently flowing water; therefore, Mr. Lambert ruled the tributary out as a source of the discharge.

6. In reviewing the map, Mr. Lambert noted another tributary named Crooked Creek. The confluence of Crooked Creek and Squaw Creek was located downstream of the Hammond Avenue bridge; therefore it was highly unlikely that Crooked Creek was the source of the discharge. However, Mr. Lambert checked Crooked Creek and observed clear water with plant growth and many live fish. Mr. Lambert travelled to the area where a tributary of Crooked Creek crossed at Inkpaduta Avenue. The water at this area was clear, with vegetation, and live fish.

7. Mr. Lambert returned to the Hammond Avenue bridge and observed the animal feeding operation that he had noted before. He did not see any signs of a manure discharge from this facility. Mr. Lambert continued to Gerber Avenue where another small animal feeding operation was located approximately ¼ mile south of Squaw Creek. Mr. Lambert did not observe any signs of a discharge and the water from this area was clear. Mr. Lambert returned to the Hammond Avenue bridge where he proceeded to enter the creek and wade upstream. He observed foam and scum for approximately ¼ of a mile and he also noted dead fish in the creek. Approximately 1/3 of a mile upstream, Mr. Lambert discovered a tile bulkhead in the north bank of the creek. The tile was actively discharging a small stream of water to the creek. There was a small amount of foam immediately below the tile outfall. Downstream of the tile outfall, Mr. Lambert observed foam and scum in the water. The water discharging from the tile was clear, but the field test from the water indicated an ammonia concentration of 1.6 ppm. Mr. Lambert collected laboratory samples from the discharging water. The laboratory samples indicated an ammonia concentration of 0.86 mg/L and a COD concentration of 66 mg/L. Mr. Lambert did observe a few live minnows approximately 20 yards downstream of the tile outfall indicating that even though the ammonia concentration was elevated that the acutely toxic slug had passed through earlier and the fish kill was not ongoing at this location. The creek water upstream of the tile outfall did not contain any visible foam or scum, and Mr. Lambert observed numerous live fish. The field test indicated an ammonia concentration of 0.3 ppm. Mr. Lambert collected laboratory samples from the upstream water. The laboratory samples indicated an ammonia concentration of 0.12 mg/L and a COD concentration of 10 mg/L. Mr. Lambert returned downstream to the Highway 17 bridge and observed live fish on both sides of the bridge. The field test indicated an ammonia concentration of 0.5 ppm. Mr. Lambert contacted Scott Grummer, DNR Fisheries Bureau, and explained that he

had discovered a tile outfall but had not determined a responsible party. Mr. Grummer and Mr. Lambert decided they would meet the next morning and Mr. Gummer and his staff would begin the fish kill count.

8. On August 20, 2011, while en route to the fish kill site, Mr. Lambert received a telephone call from Mr. Grummer. Mr. Grummer stated that he and Kurt Meek, DNR Fisheries Bureau, had arrived at the Highway 17 bridge and the fish in the area were alive. Mr. Grummer and Mr. Meek were going to begin the investigation. Once on site, Mr. Lambert met with Mr. Grummer and Mr. Meek. They stated that they had been to the Inkpaduta Avenue bridge and determined the fish had been dead awhile. They observed some live fish at this location. It was determined that the ammonia slug had dissipated quickly and was over. Mr. Grummer and Mr. Meek continued with the fish count.

9. Mr. Lambert returned to the animal feeding operation near Hammond Avenue that he had previously visited. There was still no indication that a manure release had occurred. Mr. Lambert contacted the owner of the facility, Greg Carlson. Mr. Carlson met Mr. Lambert at the facility and Mr. Lambert explained the situation. Mr. Carlson stated that manure had been transferred between two of the buildings but that no manure had been spilled. Mr. Carlson and Mr. Lambert found a tile intake on the west side of the property, but there was no evidence that manure had been discharged through the tile. Based on the findings, Mr. Lambert determined this facility was not the source of the ammonia in the creek.

10. Mr. Lambert met with Mr. Grummer and Mr. Meek after they concluded their investigation. Mr. Grummer stated the fish had been dead for approximately five days and he believed that the fish kill was over. Mr. Lambert continued north searching the perimeters of land sections looking for the source of the discharge. Approximately 2 ¼ miles northwest of the tile outfall, Mr. Lambert observed Paul Sealine's animal feeding operation located at 1553 360th Street, Stratford, Iowa. Mr. Lambert continued to Mr. Sealine's residence where he spoke to Mr. Sealine and explained why he was in the area. Mr. Sealine stated that there had been no recent spills but that he had spray-irrigated manure from the outside concrete tanks to standing corn the previous Monday, August 15. Mr. Sealine and Mr. Lambert went to the application site. Mr. Lambert asked about any tile intakes. Mr. Sealine explained that there was one, but that he had plugged it prior to the application. Mr. Lambert viewed the tile intake and discovered that the plug was not water tight. There was manure residue pooled around the intake. The field test on the ground around the intake indicated the presence of ammonia. Mr. Sealine explained that he had applied approximately 100,000 gallons from the concrete manure storage tank to an approximate three acre area. Based on the residue present on the outside of the intake, it appeared to Mr. Lambert that the manure had ponded around the intake in sufficient depth to overtop the intake and flow down between the plastic of the intake and the plug. There were large cracks in the ground around the intake and the application area in general. The cracks were

approximately one to two inches wide. Mr. Lambert did observe and measure a few of the cracks that were approximately six inches deep. Mr. Sealine explained that the application field was in a drainage district and the tile was ten to twelve inches in diameter and was six feet deep. Mr. Sealine knew that the tile line went to the south from Highway 175, but was uncertain as to where it went past Highway 175. Mr. Lambert explained that he believed that this recent manure application could be the source of the manure discharge. He explained that the manure was applied in sufficient volume to both enter the tile intake and infiltrate the ground entering the tile system and ultimately discharge to the creek. Mr. Lambert explained that he would need to verify this by reviewing the Hamilton County drainage maps.

11. On August 22, 2011, Mr. Lambert visited the Hamilton County Auditor's office to review the drainage district maps for the area of the Squaw Creek fish kill. Mr. Lambert also consulted an aerial map of the area and observed an animal feeding operation southwest of Mr. Sealine's facility located at 1525 370th Street known as Westrum Farms, Inc. Westrum Farms, Inc. was outside of the drainage district of the application field that Mr. Sealine had used, but Mr. Lambert visited the Westrum Farms, Inc. facility to ensure that it was not a contributor to the discharge. Mr. Lambert did not observe any evidence of manure spills at the facility. Mr. Westrum stated that manure had only been transferred between buildings at this facility. Mr. Westrum explained that the drainage from the facility goes east and south to the creek, not to the north toward the tile from Mr. Sealine's application field.

12. Mr. Lambert returned to the Sealine facility and met with Mr. Sealine to review the drainage ditch maps. They determined that the field tile was likely tied into the county system that discharged to the creek. Mr. Lambert and Mr. Sealine removed the plug in the tile and conducted a field test on the standing water in the tile. The results indicated an ammonia concentration of > 3.0 ppm. Mr. Lambert collected laboratory samples of the water from the tile at the bottom of the intake. The laboratory samples indicated an ammonia concentration of 10 mg/L. Mr. Lambert instructed Mr. Sealine to properly plug the tile intake in case of rain. Mr. Sealine stated that it appeared he was responsible for the fish kill. Mr. Lambert informed him that he would conduct a dye test on the tile intake to verify the findings.

13. On August 24, 2011, dye was placed into the tile intake and flushed with water. Mr. Lambert and Mr. Sealine reviewed the drainage maps again. Mr. Sealine stated that there were no other up-gradient crop fields tiled into his application field; therefore there would be no other source of manure in the tile line other than the manure that had been applied to the field. Mr. Lambert instructed Mr. Sealine to check the creek that evening and contact him immediately if he saw any red water. As Mr. Lambert left Mr. Sealine's facility he stopped at the Hammond Avenue bridge and noted that the water appeared normal. At the Inkpaduta Avenue

bridge the water was still slightly murky with floating mats of foam and scum on the surface. The water at the Highway 17 bridge was clear.

14. On August 25, 2011, Mr. Lambert stopped at the Hammond Avenue bridge to check for the presence of dye. The dye was not present at the time, but there was a scummy film on the surface of the water that had not been there the day before. This film was on the water at the Inkpaduta Avenue and Highway 17 bridges as well. Mr. Lambert returned to the Hammond Avenue bridge and began wading upstream looking for the dye. Approximately 50 yards from the tile outfall Mr. Lambert began to see red tinted water and when he reached the outfall the outfall was flowing with the red tinted water.

15. Mr. Lambert travelled to Mr. Sealine's facility to discuss the findings with him. Mr. Lambert explained that based on the results of his investigation he had concluded the manure irrigated on the field entered the field tile through the tile intake and likely through infiltration through the ground. There were no other known sources of manure in Mr. Sealine's tile line. The tile line ultimately discharged into Squaw Creek, as proven by the dye test. Mr. Lambert explained that the fish kill was a direct result of Mr. Sealine's manure application. Mr. Sealine stated he was in agreement and did not dispute Mr. Lambert's opinion.

16. On September 11, 2011, DNR issued a Notice of Violation letter to Mr. Sealine for the prohibited discharge of manure and the water quality violations discovered by Mr. Lambert during his August 2011 investigation. The letter explained that the matter was being referred for further enforcement.

17. DNR's Fisheries Bureau conducted a fish kill assessment on August 20, 2011 of the impacted areas of Squaw Creek. The fish kill investigation was led by Scott Grummer who was assisted by Kurt Meek. The investigation determined that land application of manure that was discharged to Squaw Creek caused a 2.75 mile long fish kill that traveled through Sections 25 and 26, Marion Township, Hamilton County and Section 30 in Clear Lake Township, Hamilton County, south of Stanhope, Iowa. The fish kill assessment determined that 30,350 fish were killed, valued at $13,750.22. The Fisheries Bureau investigative costs were $641.56 and the Field Office investigative costs were $2,233.29 for total DNR investigative costs of $2,874.85.

18. In order to avoid future discharges, Mr. Sealine has removed solids from the manure storage structure to increase the structure's existing storage capacity thereby reducing the number of times manure will have to be spray-irrigated each year. In addition, Mr. Sealine will properly plug any field tile intakes during spray irrigation to ensure that manure will not discharge through the intake. Finally, Mr. Sealine will monitor areas around tile intakes during manure application to ensure manure does not discharge to the tile intakes via cracks in the soil or any other means.

CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. DNR Field Office 2's investigation determined that manure from Mr. Sealine's facility was spray irrigated on a field and ultimately was discharged into Squaw Creek. The above-mentioned facts indicate violations of these provisions.

3. Iowa Code section 459.311(2) and 567 IAC 65.2(7) require that all manure removed from an animal feeding operation or its manure control facilities be land-applied in a manner that will not cause surface or groundwater pollution. The manure that was sprayed irrigated entered the drainage district tile system and was ultimately discharged into Squaw Creek. The above-mentioned facts indicate violations of these provisions.

4. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants. Mr. Lambert observed scum and foam on the water surface. Additionally, a substantial fish kill resulted from the manure discharge. The above mentioned facts indicate violations of the general water quality criteria.

5. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure discharge as a result of the land application by Mr. Sealine.

V. ORDER

THEREFORE, the DNR orders and Paul Sealine agrees to do the following:

1. Paul Sealine shall pay fish restitution in the amount of $13,750.22 and investigative costs in the amount of $2,373.11[1] in accordance with the payment plan in Paragraph 3 of this section.

2. Paul Sealine shall pay an administrative penalty in the amount of $1,000.00 in accordance with the payment plan in Paragraph 3 of this section.

3. Paul Sealine shall pay the fish restitution ($13,750.22), investigative costs ($2,373.11), and administrative penalty ($1,000.00) for a total of $17,123.33 in accordance with the following payment plan. If any of the payments are not in accordance with the plan, the remaining penalty shall be due immediately.

$4,283.33 due April 15, 2012	$4,280.00 due April 15, 2013
$4,280.00 due October 15, 2012	$4,280.00 due October 15, 2013

The administrative penalty of $1,000.00 shall be paid first with the remaining funds applied to restitution and investigative costs.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to $5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to $10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of $1,000.00. The administrative penalty is determined as follows:

Economic Benefit –Mr. Sealine did not obtain an economic benefit as a result of the manure discharge. Therefore, no economic benefit is being assessed.

[1] For settlement purposes the investigative costs of the Field Office 2 personnel were reduced to $1,731.55. The investigative costs assessed in this Administrative Consent Order are the sum of the Field Office 2 negotiated costs of $1,731.55 and the Fisheries Bureau costs of $641.56 for a total negotiated investigate costs of 2,373.11.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 2 documented a manure discharge that led to documented water quality violations. These violations threaten the integrity of the regulatory programs because compliance with the animal feeding operation is required of all persons in this state. Therefore, $800.00 is assessed for this factor.

Culpability – Mr. Sealine has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Sealine attempted to plug the tile intake prior to the application; however it was not sufficient and the land application led to the discharge and fish kill. Mr. Sealine was cooperative in working with the field office in determining the cause of the discharge. Therefore, $200.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Paul Sealine. For that reason Paul Sealine waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

Roger L. Lande

ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 13 day of April, 2012.

Paul Sealine

PAUL SEALINE

Dated this 8 day of April, 2012.

RECEIVED
APR 10 2012
DNR AIR QUALITY